

## **REMARKS**

Applicant respectfully requests entry of the following amendments and remarks contained herein in response to the Office Action mailed November 13, 2007. Applicant respectfully submits that the amendments and remarks contained herein place the instant application in condition for allowance.

Upon entry of the amendments in this response, claims 24 – 42 are pending. In particular, Applicant adds claims 24 – 42 cancels claims 1 – 23 without prejudice, waiver, or disclaimer. Applicant cancels claims 1 – 23 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of these canceled claims in a continuing application, if Applicant so chooses, and does not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Rejections Under 35 U.S.C. §101**

The Office Action indicates that claims 17, 18, and 23 stand rejected under 35 U.S.C. §101 as claiming allegedly that the invention is directed to non-statutory subject matter. Applicant cancels these claims, thus rendering this issue moot.

### **II. Rejections Under 35 U.S.C. §102**

The Office Action indicates that claims 1 – 10, 13 – 14, 17, 19 – 21, and 23 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent Number 6,330,560 ("*Harrison*"). Applicant cancels these claims, thus rendering this issue moot.

### **III. Rejections Under 35 U.S.C. §103**

The Office Action indicates that claims 11 – 12, 15 – 16, 18, and 22 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent Number 6,330,560 ("*Harrison*") in view of U.S. Patent Number 6,917,610 ("*Kung*"). Applicant cancels these claims, thus rendering this issue moot.

### **IV. New Claims 24 – 42**

#### **A. New claim 24 is Allowable**

In addition, Applicant adds new claim 24. New claim 24 is allowable for at least the reason the cited art fails to disclose, teach, or suggest a system comprising "a monitoring component configured to monitor the first communication port for an acknowledgement message from the server computing component... [and] a testing component configured to, in response to an acknowledgement message being received, initiate a port test at the first communication port, the port test configured to facilitate interaction between the client computing element and the server computing element" as recited in new claim 24. More specifically, *Harrison* discloses a "lock port [that] is actually used by network management applications to lock the server application by forming a connection to the port and passing the user and/or host identification of the lock requester" (column 5, line 10). Applicant respectfully submits that this is different than new claim 24 for at least the reason that a lock port is different than a monitoring component and a testing component. Additionally, *Kung* fails to overcome the deficiencies of *Harrison*. For at least these reasons, new claim 24 is allowable.

#### **B. New claim 39 is Allowable**

In addition, Applicant adds new claim 39. New claim 39 is allowable for at least the reason the cited art fails to disclose, teach, or suggest a computer readable

medium comprising “monitoring logic configured to monitor the first communication port for an acknowledgement message from the server computing component... [and] testing logic configured to, in response to an acknowledgement message being received, initiate a port test at the first communication port, the port test configured to facilitate interaction between the client computing element and the server computing element” as recited in new claim 39. More specifically, *Harrison* discloses a “lock port [that] is actually used by network management applications to lock the server application by forming a connection to the port and passing the user and/or host identification of the lock requester” (column 5, line 10). Applicant respectfully submits that this is different than new claim 39 for at least the reason that a lock port is different than a monitoring component and a testing component. Additionally, *Kung* fails to overcome the deficiencies of *Harrison*. For at least these reasons, new claim 39 is allowable.

**C. New claim 41 is Allowable**

In addition, Applicant adds new claim 41. New claim 41 is allowable for at least the reason the cited art fails to disclose, teach, or suggest a method comprising “monitoring the first communication port for an acknowledgement message from the server computing component... [and] initiating, in response to an acknowledgement message being received, a port test at the first communication port, the port test configured to facilitate interaction between the client computing element and the server computing element” as recited in new claim 41. More specifically, *Harrison* discloses a “lock port [that] is actually used by network management applications to lock the server application by forming a connection to the port and passing the user and/or host identification of the lock requester” (column 5, line 10). Applicant respectfully submits that this is different than new claim 41 for at least the reason that a lock port is different than a monitoring component and a testing component.

Additionally, *Kung* fails to overcome the deficiencies of *Harrison*. For at least these reasons, new claim 41 is allowable.

**D. New Claims 25 – 38, 40, and 42 are Allowable**

Additionally, new claims 25 – 38, 40, and 42 are allowable. More specifically, new claims 25 – 38 are believed to be allowable for at least the reason that these claims depend from and include the elements of allowable independent claim 24. Dependent claim 40 is believed to be allowable for at least the reason that it depends from and include the elements of allowable independent claim 39. Further, dependent claim 42 is believed to be allowable for at least the reason that it depends from and include the elements of allowable independent claim 41. *In re Fine, Minnesota Mining and Mfg.Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**IV. Allegedly Well Known Subject Matter**

**A. The Subject Matter of New Claims 34 and 35 is Not Well Known**

Additionally, in rejecting now canceled claims 11, 12, and 22, the Office Action asserts “[i]t would have been obvious for one of the ordinary skill in the art at the time of the invention to use Harrison's method and system of checking port status before connecting to a different device in the an audio video chat program. Motivation to combine comes from the knowledge well known in the art that checking port status for a chat program before connecting would provide guarantee that the session will not be dropped or failed and therefore would make the system more reliable” (OA page 8, line 10). In applying this alleged well known finding to new claims 35 and 35 (and other new claims), Applicant respectfully traverses the alleged finding of well known subject matter and submits that the subject matter noted above should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound

technical and scientific reasoning to support such conclusions, as required.

Additionally, Applicant submits that merely providing a reference (or a couple of references) that allegedly discloses the subject matter in question, does not rise to an evidentiary level of being well known in the industry. Applicant submits that even if the cited references disclose the subject matter in question (a point that the Applicant is not conceding), presence of that subject matter in a reference does not raise the level of commonality of that subject matter to something of unquestionable fact. For at least this specific and particular reason, Applicant submits that the subject matter in question is not well known in the art.

Applicant additionally submits that particularly in the context of the claimed combination that includes the elements of canceled claims 1 and 19, the subject matter in question is too complex for a reasonably skilled person to consider it to be well known to the point that no additional evidence is needed. For at least this additional specific and particular reason, Applicant respectfully submits that the subject matter in question is not well known in the art, respectfully traverses the alleged finding of well known subject matter, and submits that claims 34 and 35 are allowable.

**B. The Subject Matter of New Claim 38 is Not Well Known**

Additionally, in rejecting now canceled claims 15, 16, and 18, the Office Action asserts “[m]otivation to do so not only comes from the knowledge well known in the art but also from the teachings of Kung” (OA page 8, line 10). In applying this alleged well known finding to new claim 38 (and other new claims), Applicant respectfully traverses the alleged finding of well known subject matter and submits that the subject matter noted above should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions, as required. Additionally, Applicant submits that merely providing

a reference (or a couple of references) that allegedly discloses the subject matter in question, does not rise to an evidentiary level of being well known in the industry. Applicant submits that even if the cited references disclose the subject matter in question (a point that the Applicant is not conceding), presence of that subject matter in a reference does not raise the level of commonality of that subject matter to something of unquestionable fact. For at least this specific and particular reason, Applicant submits that the subject matter in question is not well known in the art.

Applicant additionally submits that particularly in the context of the claimed combination that includes elements of claims 1 and 17, the subject matter in question is too complex for a reasonably skilled person to consider it to be well known to the point that no additional evidence is needed. For at least this additional specific and particular reason, Applicant respectfully submits that the subject matter in question is not well known in the art, respectfully traverses the alleged finding of well known subject matter, and submits that claim 38 is allowable.

## **CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or addressed, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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